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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/388,294	09/01/1999	MICHAEL A. EVANS	197449000300	3723

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EXAMINER

SIRMONS, KEVIN C

ART UNIT PAPER NUMBER

3763

DATE MAILED: 05/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

15

Office Action Summary

Application No.

09/388,294

Applicant(s)

EVANS ET AL.

Examiner

Kevin C. Sirmons

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-38 and 42-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 33-37 and 42-44 is/are rejected.
- 7) ☒ Claim(s) 38 and 45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Request for Continued Examination

The request filed on 2/24/03 for Continued Examination (RCE) is acceptable and a RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Eld U.S. Pat. No. 5,545,141.

Eld discloses a device for positioning a filament in a body lumen having lumen walls, said device comprising: a flexible catheter (10); means advancable from the catheter for creating a second access penetration in the lumen wall (50) and providing a filament path along the length of the body lumen between the first and second access penetrations (a filament path can be made between the first and second access penetrations with the device of Eld), the means advancable also being retractable into the catheter after creating the second access penetration (figs. 1A, B, and 3A-D); as to claim 34, (col. 4, lines 43-67); as to claim 35, (col. 5, lines 44-59) see applicant's definition (page 3, lines 16-22 of paper no. 9).

Note: applicant has defined his means as any structure, material or suitable entity, which is advancable from the catheter for creating a second access penetration

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and providing a filament path between said first and second access penetrations. (page 3, lines 4-15 of paper no. 9). Further, Eld catheter is fully capable of being introduced into the body through a first access penetration in the lumen wall.

Claims 33, 36-37 and 42-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Eld U.S. Pat. No. 5,545,141.

Eld discloses a device for positioning a filament in a body lumen having lumen walls, said device comprising: a flexible catheter (not shown, (the endoscope is regarded by the examiner to be a catheter) col. 5, lines 23-27); means advancable from the catheter for creating a second access penetration in the lumen wall (50) and providing a filament path along the length of the body lumen between the first and second access penetrations (figs. 3A-3D), the means advancable also being retractable into the catheter after creating the second access penetration (figs. 1A, B, and 3A-D); as to claim 36, a guide tube (32 and figs. 1 and 2) and penetrating element (50); as to claim 37, (col. 4, lines 35-38); as to claims 42-44, (see above rejection).

Allowable Subject Matter

Claims 38 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Eld discloses a device for position a filament in a body lumen having lumen walls substantially as claimed except for the combination as claimed specifically including an expandable anchor disposed over at least a portion of the catheter.

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Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

KCS

Kevin C. Sirmons
Patent Examiner
5/27/03